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Supreme Court of the United States

OCTOBER TERM, 1967

No. 624

BOSTON & PROVIDENCE RAILROAD STOCKHOLDERS DEVELOPMENT GROUP,

PETITIONER,

v.

CHARLES W. BARTLETT, TRUSTEE, *et al.*,

RESPONDENTS.

No. 661, Misc.

BOSTON & PROVIDENCE RAILROAD STOCKHOLDERS DEVELOPMENT GROUP,

PETITIONER,

v.

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, *et al*

ON PETITION FOR A WRIT OF CERTIORARI AND MOTION FOR LEAVE TO FILE A WRIT OF MANDAMUS

MEMORANDUM FOR THE BOSTON & PROVIDENCE RAILROAD CORPORATION, DEBTOR, IN OPPOSITION

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MEMORANDUM FOR THE BOSTON & PROVIDENCE RAILROAD CORPORATION, DEBTOR, IN OPPOSITION

Petitioner, aggrieved by the District Court's approval of a Plan of Reorganization for the Boston & Providence Railroad Corporation, filed a timely notice of appeal. There-

after, it sought, first, an extension of thirty days for filing the designation of portions of the record to be printed, statement of points to be relied upon, and brief. This was denied. Then one week after the deadline, it filed a partial designation of the record together with another motion for enlargement of time. Over the strenuous objections of other parties (and without the concurrence of any) the Court did grant an extension for filing a supplemental designation. But it declined to grant another extension of time for filing the brief and ultimately dismissed the appeal for want of diligent prosecution. Petitioner complains that the Circuit Court of Appeals' refusal to grant the requested extension constitutes an abuse of discretion and maintains that as a consequence this Court should direct that its appeal be heard.

As the Debtor sees it, the only question presented by the Petition for Certiorari is whether the Court of Appeals, in dismissing the Petitioner's appeal to that Court "so far departed from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's power of supervision." Rule 19, Rules of Supreme Court. Except for exercising its discretion once in Petitioner's favor, the Court of Appeals did no more than insist on compliance with its rules. Even if the case were of public importance, or involved a conflict of law, which Petitioner does not allege it does, Petitioner has no right to insist that the Court's discretion be exercised in its favor. In sum, Petitioner asked for exceptional treatment. His request was considered, and was denied. Since nothing is alleged that goes to support his charge of abuse of discretion, there is no basis for a Writ of Certiorari.

Assuming Mandamus rather than Certiorari would be the proper remedy for a party aggrieved by a gross departure from the accepted and usual course of judicial proceedings in the Court of Appeals, the question of its

issuance by this Honorable Court is the same question as it presented by the Petition for Certiorari. Meeting the point in a somewhat different way, far from departing from the usual course of judicial proceeding, in refusing to make a second exception to its Rules, the Court of Appeals declined to vary its usual procedure, after consideration and for cause. Had its reasons been entirely misguided, or even improper (if one can conceive of such a case) still, it would not follow that upon a proper exercise of discretion, an extension should have been granted, so that, as the Debtor sees it, Petitioner's right would be only to have its request for an extension reconsidered. The Debtor respectfully submits that it has as much right as the Petitioner to have the Circuit Court's discretion fairly exercised. Even had an abuse been involved, which is nowhere alleged by Petitioner (except by characterization), this fact should not, as the Debtor sees it, give Petitioner automatically the right to have the Court of Appeals grant his requested extensions and hear his appeal.

Respectfully submitted

Boston & Providence Railroad Corporation

By: Laurence M. Channing

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Attorney for the Debtor.

October 13, 1967

I, LAURENCE M. CHANNING, attorney for the Boston & Providence Railroad Corporation, hereby certify that I have served this memorandum on each of the parties in this proceeding in compliance with Rule 33(1) and (2)(a), Supreme Court Rules, by mailing a copy thereof to each counsel of record as follows:

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October 13, 1967